

RECREATION, LIBRARIES, & AUTHORITIES COMMITTEE

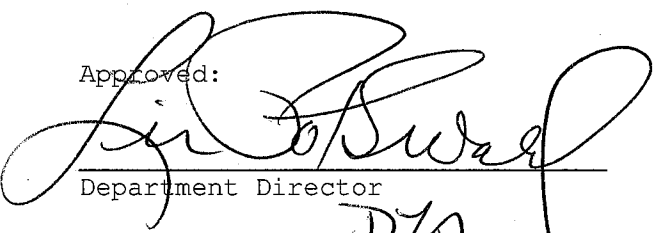
11-0115R

RESOLUTION AWARDING A CONTRACT TO MEYER GROUP OF DULUTH, PC, FOR PROFESSIONAL ARCHITECTURE, PROJECT MANAGEMENT AND ENGINEERING SERVICES RELATED TO MECHANICAL SYSTEM AND BUILDING ENVELOPE UPGRADES AT THE MAIN LIBRARY FOR A TOTAL OF \$56,160.

CITY PROPOSAL:

RESOLVED, that city officials are hereby authorized to enter into an agreement with Meyer Group of Duluth, PC, substantially in the form of that on file in the office of the city clerk as Public Document No. _____ for professional architectural, project management, and engineering services related to mechanical system and building envelope upgrades at the Duluth main public library, 520 West Superior Street, for a total of \$56,160, payable from the Capital Improvements Fund 450, Dept./Agency 030 (Finance), Object 5520 (Buildings & Structures), Project CP2010-1010B.

Approved:


Department Director

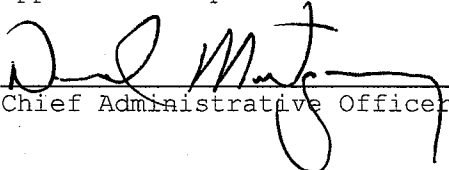
Purchasing Agent DZS

Approved as to form:

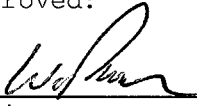

Attorney

ARCH/LIB/PRCH DS:le 03/03/2011

Approved for presentation to council:


Chief Administrative Officer

Approved:


Auditor

STATEMENT OF PURPOSE: This resolution authorizes a contract with the Meyer Group of Duluth, PC, for HVAC (heating-ventilating-air conditioning) system upgrades to the Duluth main public library for a total of \$56,160, payable from the capital improvements fund.

The firm has been working with Energy Management Solutions, Inc., as part of a comprehensive energy audit of city buildings. As an architectural firm, their professional services were needed for construction of the library upgrades. The work is expected to be completed by spring of 2012.

Requisition 11-0225

AGREEMENT

MEYER GROUP

&
City of Duluth

THIS AGREEMENT, entered into as of this 25 day of February, 2011, by and between Meyer Group, of 410 US Bank Place, 130 W Superior Street, Duluth, MN 55802 hereinafter referred to as the "Architect," and the City of Duluth, Minnesota, hereinafter referred to as the "Owner";

WITNESSETH THAT:

WHEREAS, it is the intention of the City to undertake development of a public facility; and

WHEREAS, the City desires to engage the Architect to render certain architectural services in connection with such undertakings;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

- I. The Architect shall develop and prepare and/or administer the necessary schematic design, design development, construction and bidding documents, and on-site construction observation required for the construction of Mechanical System & Building Envelope Upgrades at the Main Public Library, 520 West Superior Street, Duluth, Minnesota
Project No. – 1110B & 1010B, hereinafter referred to as the "Project," as described in the program prepared by the City of Duluth, dated February 11, 2011, and in Exhibit A, which is made a part hereof, in accordance with the Terms and Conditions of this Agreement.
- II. The Owner shall compensate the Architect, in accordance with the Terms and Conditions of this Agreement.
- III. The Owner and Architect agree in accordance with the Terms and Conditions of this Agreement that:
 - A. If the Scope of the Project is changed materially, compensation shall be subject to renegotiation.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 1.

Architect's Services

Basic Services

- 1.1 The Architect's Basic Services consist of the six phases described below and include normal structural, mechanical, electrical, and civil engineering services and any other services except "Additional Services" as defined in Article 1.2.
- 1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees, and Architect's consultants as enumerated in this Agreement and any other services included in Article 12.

- 1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of Owner or its agent, the Architect shall submit for Owner or its agent's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for Owner or its agent's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by Owner or its agent shall be adhered to by the Architect.
- 1.1.3 The services covered by this Agreement are subject to the time limitations contained in this Agreement or attachments made a part hereof. The time limits for Architect's performance are
Work shall be completed by spring 2012.
-

Schematic Design Phase

- 1.1.4 The Architect shall review the program requirements furnished by the Owner to ascertain the requirements of the Project and shall present such requirements to the Owner for approval.
- 1.1.5 Based on the mutually agreed upon program, the Architect shall prepare for approval by Owner Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components.
- 1.1.6 The Architect shall submit to the Owner a Statement of Probable Construction Cost based on current area, volume or other unit costs.

Design Development Phase

- 1.1.7 The Architect shall prepare from the Schematic Design Studies the Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical, electrical and any other appropriate systems, and materials and such other essentials as may be appropriate. The Architect shall submit such Design Development Documents to the Owner for approval, and shall not commence work on the Construction Documents until such time as the Owner shall direct.
- 1.1.8 The Architect shall submit to the Owner a further Statement of Probable Construction Cost. Statements of Probable Construction Cost and Detailed Cost Estimates prepared by the Architect represent his or her best judgment as a design professional familiar with the construction industry.

Construction Documents Phase

- 1.1.9 The Architects shall prepare from the approved Design Development Documents, and any changes in the scope of the Project then authorized by Owner, Drawings and Specifications setting forth in detail the requirements for the construction of the entire Project, including the necessary bidding information, and shall assist in the preparation of bidding forms, the General Conditions and Special

Conditions of the Contract or Contracts, and the form of the Agreement between the Owner and the Contractor, as requested by the Owner. The Architect shall prepare necessary specifications and related bidding documents in final form. The Architect shall submit such Construction Documents to the Owner for approval, and shall not commence to advertise for bids or prepare for construction of the Project until such time as the Owner shall direct.

1.1.10 The Architect shall advise the Owner of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

1.1.11 The Architect shall assist the Owner in filing the required documents for the approval of governmental authorities having jurisdiction over the project.

Bidding Phase

1.1.12 The Architect, following the Owner's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals, and in awarding and preparing contracts for construction.

Construction Phase

1.1.13 The Construction Phase will commence with the award of the Construction Contract or Contracts and will terminate when the final payment is issued to the Contractor or Contractors by the Owner.

1.1.14 During the Construction Phase, the Architect shall advise and consult with the Owner concerning the Contractor's or Contractors' compliance with the Drawings and Specifications setting forth the requirements for the construction of the entire Project.

1.1.15 To the extent set out in this Agreement, the Architect shall have authority to act on behalf of the Owner during or in connection with his visits to the site of the Work. The Architect shall have a duty to protect the interests of the Owner, or to observe conformance with Contract Documents.

1.1.16 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

1.1.17 The Architect shall visit the site of the work at intervals appropriate to the stage of construction in order to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. The Architect shall endeavor to guard the Owner against defects or deficiencies in the work of the Contractor or Contractors, but the Architect shall not be required to make exhaustive or continuous on-site inspections to examine the quality or quantity of the Work. Based on on-site inspections, Architect shall advise Owner of the progress and quality of the Work. The Architect shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and he shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

- 1.1.18 The Architect shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Applications for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Contract Documents.
- 1.1.19 The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's observations at the site, and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum.
- 1.1.20 The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance there under by the Contractor. The Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written interpretations, within a reasonable time, on all claims, disputes, and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.
- 1.1.21 Interpretations of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form. In the capacity of interpreter, the Architect shall endeavor to secure faithful performance by the Contractor.
- 1.1.22 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed, or completed.
- 1.1.23 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as shop drawings, product data, and samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 1.1.24 The Architect shall prepare change orders for the Owner's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which changes are not inconsistent with the intent of the Contract Documents.
- 1.1.25 The Architect shall conduct inspections to determine the dates of substantial completion and final completion, shall receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment.
- 1.1.26 The extent of the duties, responsibilities, and limitations of authority of the Architect as the Owner's representative during construction shall not be modified or extended without written consent of the Owner and the Architect.

Post Construction Phase

- 1.1.27 Assist in project orientation of Owner and users and conduct warranty inspections.

Additional Services

- 1.2 The following services shall be provided when authorized in writing by the designated representative of the Owner. An additional service is one that is not described in Section 1 of this Agreement or documents referred to therein. The Architect shall advise the Owner when any service is considered additional, and the method and/or amount of compensation shall be determined prior to any additional services being undertaken. Any additional service performed without prior approval of the Owner, in writing, shall be done at no additional charge to the Owner. Accurate records of all expenses attributed to additional services shall be maintained by the Architect.
- 1.2.1 Providing analyses of the Owner's needs, and programming the requirements of the Project.
- 1.2.2 Providing financial feasibility or other special studies other than construction cost.
- 1.2.3 Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites in addition to those set out in the construction documents or this Agreement.
- 1.2.4 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.
- 1.2.5 Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.
- 1.2.6 Preparing documents for alternate bids or out-of-sequence services requested by the Owner.
- 1.2.7 Providing detailed quantity surveys or inventories of material, equipment and labor.
- 1.2.8 Providing interior design and other services required for or in connection with the selection of furniture and furnishings.
- 1.2.9 Providing services for planning tenant or rental spaces.

- 1.2.10 Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of the Architect.
- 1.2.11 Preparing supporting data and other services in connection with change orders, provided the change orders are due to causes beyond the control of the Architect and require architectural services beyond the preparation and distribution of the change order documents.
- 1.2.12 Making investigations involving detailed appraisals and valuations of existing facilities, and surveys or inventories required in connection with construction performed by the Owner.
- 1.2.13 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing professional services of the type set forth in Paragraph 1.1 as may be required in connection with the replacement of such Work.
- 1.2.14 Providing professional services made necessary by the default of the Contractor or by major defects in the Work of the Contractor in the performance of the Construction Contract.
- 1.2.15 Preparing a set of reproducible record prints of drawings showing significant changes in the Work made during the construction process, based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.
- 1.2.16 Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 1.2.17 Providing services after issuance to the Owner of the final Certificate for Payment, except as delineated in Paragraph 1.1.27.
- 1.2.18 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.
- 1.2.19 Providing services of professional consultants for other than the normal structural, mechanical, electrical, and civil engineering services for the Project.
- 1.2.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 2.

The Owner's Responsibilities

- 2.1 The Owner shall provide full information, including a complete program, regarding his requirements for the Project.
- 2.2 The Owner shall designate, when necessary, a representative authorized to act in his behalf with respect to the Project. The Owner shall examine documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the

Architect's services.

- 2.3 The Owner shall furnish a certified land survey of the site giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.
- 2.4 The Owner shall furnish the services of a soils engineer or other consultant when such services are deemed necessary by the Architect, including reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional recommendations.
- 2.5 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.
- 2.6 The Owner shall furnish such legal, accounting, and insurance counseling services as may be necessary for the Project and such auditing services as he may require to ascertain how or for what purposes the Contractor has used the monies paid to him under the Construction Contract.
- 2.7 The services, information, surveys and reports required by Paragraphs 2.3 through 2.6 inclusive shall be furnished at the Owner's expense, and the Architect shall be entitled to reasonably rely upon the accuracy and completeness thereof.
- 2.8 If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents, he shall give prompt written notice thereof to the Architect.
- 2.9 The Owner shall furnish information required of him as expeditiously as necessary for the orderly progress of the Work.

ARTICLE 3.

Construction Cost

- 3.1 A fixed limit of Construction Cost of Five Hundred and Eleven Thousand and no/100 Dollars (\$ 511,000.00) which includes a bidding contingency of 10%, is hereby established as a condition of this Agreement, and it shall be the Architect's responsibility to endeavor to maintain the cost of construction within that amount, unless another amount is agreed upon in writing. The construction cost is the total cost to the Owner of all Work designed or specified by the Architect and shall be determined as follows:
 - 3.1.1 The lowest bona fide bid received from a qualified bidder for any or all of such work.
 - 3.1.2 Construction Cost does not include the compensation of the Architect and his consultants, the cost of

land, right-of-way, or other costs which are the responsibility of the Owner as provided in Paragraph 2.3 through 2.6 inclusive.

- 3.1.3 If the Bidding or Negotiating Phase has not commenced within six (6) months after the Architect submits the Construction Documents to the Owner, any fixed limit of Construction Cost established as a condition of this Agreement shall be adjusted to reflect any change in the general level of prices which may have occurred in the construction industry for the area in which the Project is located. The adjustment shall reflect changes between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.
- 3.1.4 If the fixed limit of Construction Cost, including the bidding contingency (adjusted as provided in subparagraph 3.1.3, if applicable) is exceeded by the lowest bona fide bid, the Owner shall cooperate in revising the Project scope and quality as required to reduce the Probable Construction Cost. The Architect, without additional charge, shall modify the Drawings and Specifications and assist in rebidding the Project as necessary to bring the Construction Cost within the fixed limit.

ARTICLE 4.

Compensation

- 4.1 It is expressly agreed and understood that in no event shall the total amount to be paid by the Owner to the Architect under this Agreement exceed Fifty Six Thousand and One Hundred Sixty and no/100 Dollars (\$56,160) for full and complete satisfactory performance, unless specified by means of written amendments to this Agreement as provided for herein.
- 4.2 Compensation to be paid by the Owner to the Architect for the Architect's services specified in Paragraphs 1.1.1 through 1.1.12 shall in no event exceed Thirty Four Thousand Eight Hundred and Twenty and no/100 Dollars (\$34,820.00).
- 4.3 Compensation to be paid by the Owner to the Architect for the Architect's services specified in paragraphs 1.1.13 through 1.1.28 above shall be computed on the same basis as for Additional Services as outlined in Paragraph 4.4; however, that in no event shall such compensation exceed Twenty One Thousand Three Hundred and Forty and no/100 Dollars (\$21,340.00).
- 4.4 For Additional Services, as described in Paragraphs 1.2.1 through 1.2.20 above, if such services are authorized and if funds are provided therefore in Paragraph 4.6 below, compensation up to the authorized amount shall be computed as follows, unless an Exhibit B is attached hereto which supercedes the following:
- Principal's time at the fixed rate of \$150.00 per hour. For the purpose of this Agreement, the Principals are Tim Meyer and Project Engineer.
 - Employees' time (other than Principals) at a multiple of one and nine-tenths (1.9) times the employees' Direct Personnel Expense. (Direct Personnel Expense is defined as the salaries of

professional, technical and clerical employees engaged on the project by the Architect, and the prorated cost of their mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar benefits.)

- c. Services of professional consultants at a multiple of one and one-quarter (1 1/4) times the amount billed to the Architect for such services.

4.5 Reimbursable Expenses, if such expenses are authorized and if funds are provided therefore in Paragraph 4.6 below, are in addition to the Compensation for Basic and Additional Services and include actual expenditures made by the Architect, his employees or his professional consultants in accordance with the provisions of any written amendments to this Agreement, for the expenses listed in the following Subparagraphs:

- a. Expense of transportation and living when traveling in connection with the Project (does not include travel from Architect's office to Duluth if Architect's business is not located in the Duluth metro area); and fees paid for securing approval of authorities having jurisdiction over the Project.
- b. Expense of Bid Document reproductions in the number of sets as requested by Owner.
- c. If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates and expense of renderings or models for the Owner's use.

4.6 It is agreed and understood that Additional Services and Reimbursable Expenses shall be compensated by the Owner only up to the following amounts:

- a. Additional Services \$ 5,000.00 .
- b. Reimbursable Expenses \$ 2,000.00 .

ARTICLE 5.

Payments

5.1 The Owner shall make payments under this Agreement charging such amounts as follows:

MONTHLY .

5.1.1 Payments to the Architect for the services specified herein shall be made monthly upon presentation of a requisition for payment so that the compensation at the completion of each Phase shall equal the following percentages of the total compensation for services provided under Article 1, Paragraphs 1.1 through 1.1.12 inclusive:

- Schematic Design Phase --15%
- Design Development Phase --20%
- Construction Documents Phase --40%
- Completion of Bidding Phase --5%.
- Construction Administration Phase--20%

- 5.1.2 If the Contract Time initially established in the Construction Contract is exceeded by more than thirty days through no fault of the Architect, compensation for Basic Services performed by Principals, employees and professional consultants required to complete the Administration of the Construction Contract beyond the thirtieth day shall be computed as set forth in Paragraph 4.6.
- 5.1.3 Payments for Additional Services of the Architect as defined in Paragraphs 1.2 through 1.2.20 and Paragraphs 1.1.13 through 1.1.28, and for Reimbursable Expenses as defined in Paragraph 4.4, shall be made monthly upon presentation of the Architect's statement of services rendered.
- 5.1.4 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.
- 5.1.5 If the Project is suspended for more than three months or abandoned in whole or in part, the Architect shall be paid his compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due and all termination expenses as defined in Paragraph 7.3 resulting from such suspension or abandonment. If the Project is resumed after being suspended for more than three months, the Architect's compensation shall be subject to renegotiation.

ARTICLE 6.

Architect's Accounting Records

- 6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services on the Project and for services performed on the basis of a Multiple of Direct Personnel Expenses shall be kept on a generally recognized accounting basis and shall be available to the Owner or his authorized representative at reasonable times.

ARTICLE 7.

Termination of Agreement

- 7.1 This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligation under this agreement through no fault of the terminating party; provided that no such termination may be affected unless the other party is given not less than seven (7) calendar days prior written notice (delivered personally or by certified mail, return receipt requested) of intent to terminate.
- 7.2 This agreement may be terminated in whole or in part in writing by the City for its convenience; provided that the Architect is given (1) not less than seven (7) calendar days prior written notice (delivered personally or by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the City prior to termination.
- 7.3 Upon receipt of a notice of intent to terminate from the City pursuant to this agreement, the Architect shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) make

available to the City at any reasonable time at a location specified by the City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have accumulated by the Architect in performing this agreement, whether completed or in process.

- 7.4 Upon termination pursuant to this agreement, the City may take over the work and prosecute the same to completion by agreement with another party or otherwise.
- 7.5 In the event of termination by Owner pursuant to Paragraph 7.2 above, the Architect shall be paid his compensation for services performed to termination date, including reimbursable expenses then due and all reasonable termination expenses.
- 7.6 Termination expenses are defined as reimbursable expenses directly attributable to termination, plus an amount computed as a percentage of the total compensation earned to the time of termination, as follows:
- 20 percent if termination occurs during the Schematic Design Phase; or
 - 10 percent if termination occurs during the Design Development Phase; or
 - 5 percent if termination occurs during any subsequent phase.

ARTICLE 8.

Ownership of Documents and Expression

- 8.1 All drawings, specifications, reports, records, rights to copyright, and other work product developed by the Architect in connection with this Project shall remain the property of the City whether the Project is completed or not. Reuse of any of the work product of the Architect by the City on extensions of this Project or any other Project without written permission of the Architect shall be at the City's risk and the City agrees to defend, indemnify and hold harmless the Architect from all damages and costs including attorney fees to Architect arising out of any claim of a third party against Architect which claim arises out of such reuse by the City or others acting through the City and which damage is directly caused by such abuse.

ARTICLE 9.

Successors and Assigns

- 9.1 The City and the Architect each binds their respective partners, successors, executors, administrators and assigns to the other party of this agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this agreement; the Architect shall not assign, sublet, or transfer his or her respective interests in this agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Architect.

ARTICLE 10.

Extent of Agreement

- 10.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument dated and duly signed by both Owner and Architect.

ARTICLE 11.

Governing Law

- 11.1 Unless otherwise specified, this Agreement shall be governed by the applicable laws of the City of Duluth and State of Minnesota.

ARTICLE 12.

Changes

- 12.1 The Owner or the Architect may, from time to time, request changes in the scope of the services to be performed hereunder. In order to be in force, such changes, including the increase or decrease in the amount of the Architect's compensation, which are mutually agreed upon by and between the Owner and the Architect, shall be incorporated in written amendments to this Agreement.

ARTICLE 13.

Hold Harmless and Insurance

- 13.1 Architect agrees to defend, indemnify and hold harmless the City of Duluth and any of its agents or employees from and against any and all claims arising out of the performance of this Agreement by Architect except to the extent that such indemnification is specifically prohibited by Minnesota Statutes Chapter 337. Architect shall not be required to indemnify City for claims of liability arising out of the sole negligent or intentional acts or omission of the City but shall be specifically required to and agrees to defend and indemnify City in all cases where claims of liability against the City arise out of acts or omissions which are passive or derivative of the negligent or intentional acts or omissions of Architect, such as, but including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such acts or omission by Architect and any other such source of liability. In the event the City of Duluth consents to, allows, authorizes or approves of changes to any plans, specifications or other construction documents, and these changes are not approved or ratified in writing by the Architect, the City of Duluth recognizes that such changes and the results thereof are not the responsibility of the Architect. Therefore, the City of Duluth agrees to release the Architect from any liability arising from the construction, use or result of such changes. In addition, the City of Duluth agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) arising

from such changes, except only those damages, liabilities and costs arising from the sole negligence or willful misconduct of the Architect.

13.2 The Architect shall obtain the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota unless Architect shall have successfully demonstrated to the City Attorney, in the reasonable exercise of his or her discretion that such insurance is not reasonably available in the market. If the Architect demonstrates to the reasonable satisfaction of the City Attorney that such insurance requires hereunder is not reasonably available in the market, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the city which is reasonably available.

- a. Worker's Compensation Insurance in accordance with the laws of the State of Minnesota.
- b. Commercial General Liability Insurance in an amount not less than **\$1,500,000** combined single limit.
- c. Automobile Liability coverage in an amount not less than **\$1,500,000** combined single limit.
- d. Professional liability (errors and omissions) insurance in an amount not less than \$1,500,000 combined single limit property damage in any year or such greater amounts the City determines is necessary to protect it; provided further that in the event the professional malpractice insurance is in the form of "claims made" insurance, 60 days notice prior to any cancellation or modification shall be required; and in such event, Service Provider agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the statute of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement. The City Attorney reserves the right and the Architect agrees to revisions upward or downward in the minimum insurance requirements set forth above, provided that any such revisions shall be reasonable.

13.3 Such insurance shall be maintained in full force and effect during the life of the agreement and shall protect the Architect, its employees, agents and representatives from claims for damages including but not limited to personal injury and death and any covered act by the Architect, its employees, agents and representatives in the performance of the work covered by the agreement.

13.4 Certificates showing that the Architect is carrying the above-described insurance in the specified amounts shall be furnished to the City prior to the execution of this agreement and a certificate showing continued maintenance of such insurance shall be filed with the City during the term of this agreement.

- 13.5 The City shall be named as an "additional insured," with the same coverages as Architect, on General and Automobile Liability policies other than the Professional Liability and Worker's Compensation policies of Architect. The additional insured coverage required by this agreement is coverage for any claim arising out of the Architect's performance of this agreement. *An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth as an additional insured.* **The use of an "Acord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG2010 pre 2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent , as approved by the Duluth City Attorney's Office.**
- 13.6 The certificates shall provide that the policies shall not be changed or canceled during the life of the agreement without at least thirty (30) days advance written notice to the City.

ARTICLE 14.

General Conditions

- 14.1 This Agreement is subject to and incorporates the City Part II, "Supplemental General Conditions for Federally Assisted Activities" (latest edition), which is incorporated by reference.
- 14.2 This Agreement is subject to and incorporates the definitions of terms within A.I.A. Document A201 (latest edition), "General Conditions of the Contract for Construction", which is hereby incorporated by reference.

ARTICLE 15.

Miscellaneous

- 15.1 Exhibit "A," dated February 11, 2011, is hereby incorporated into this Agreement.
- 15.2 Exhibit "____," dated _____, is hereby made a part of this Agreement.

This Agreement executed the day and year first above written.

AUTHORIZATIONS

Countersigned:

City Auditor

Approved this ____ day of _____,
2010

Department Director

Approved this ____ day of _____
, 2010

Purchasing Agent

Date: _____

Assistant City
Attorney

Approved this ____ day of _____
, 2010

CITY OF DULUTH

By: _____
Mayor

Attest: _____
City Clerk

Date attested to: _____

ARCHITECT

By: _____
Architect's Representative

Representative's Title

Date: _____